

THE FAILURE OF THE WARREN REPORT

ALEXANDER M. BICKEL

THE WARREN COMMISSION (known formally as the President's Commission on the Assassination of President John F. Kennedy) was born of rampaging suspicions and worldwide controversy. It was charged "to evaluate all the facts and circumstances" surrounding the assassination, "to satisfy itself that the truth is known as far as it can be discovered," and thus to satisfy everyone else. For a season, the task seemed accomplished. The Commission's Report was generally received, in this country at least, with rhapsodic relief. The few remaining voices of dissent sounded increasingly remote and implausible, and there was every apparent prospect that they too would finally be still. Yet today, two years after the publication of the Report, new voices of dissent are heard, and it has become clear that far from having "satisfied itself that the truth is known," the Commission scarcely even evaluated "all the facts and circumstances."

The Commission concluded that Lee Harvey Oswald, acting alone, killed President Kennedy and wounded Governor John B. Connally of Texas, then left the scene of this crime, encountered Dallas Police Officer J. D. Tippit and shot him also, and after his capture was himself killed by Jack Ruby, who had no other connection with the affair. Oswald, according to the Commission, fired three bullets from a perch at the sixth-floor window on the southeast side of the Texas School Book Depository Building, and inflicted the following wounds:

(1) President Kennedy was first struck by a bullet which entered at the back of his neck and exited through the lower front portion of his neck, causing a wound which would not necessarily have been lethal. The President was struck a second time by a bullet which entered the right rear portion of his head causing a massive and fatal wound.

(2) Governor Connally was struck by a bullet which entered on the right side of his back and travelled downward through the right side of his chest, exiting below his right nipple. This bullet then passed through his right wrist and entered his left thigh where it caused a superficial wound.

Concerning the distribution of Oswald's three

shots on his targets, the Warren Commission said:

Although it is not necessary to any essential findings of the Commission to determine just which shot hit Governor Connally, there is very persuasive evidence from the experts to indicate that the same bullet which pierced the President's throat also caused Governor Connally's wounds. However, Governor Connally's testimony and certain other factors have given rise to some difference of opinion as to this probability but there is no question in the mind of any member of the Commission that all the shots which caused the President's and Governor Connally's wounds were fired from the sixth-floor window of the Texas School Book Depository.

The "difference of opinion" about the "probability" that the same bullet pierced the President's throat and inflicted all of Governor Connally's wounds—this difference of opinion, it now turns out, divided the Commission itself, and was rather stronger than the word "some" suggests. In interviews with five of the seven Commission members, on which he reports in his book, *Inquest*,* Edward Jay Epstein found that Commissioners Gerald R. Ford, Allen W. Dulles, and John J. McCloy believed that one bullet had gone through both President Kennedy and Governor Connally, while Commissioners Richard B. Russell, John Sherman Cooper, and Hale Boggs were unpersuaded, and tended to the view that two separate bullets had inflicted the President's first wound and the injuries to Governor Connally. (The position of Chief Justice Warren is not known.)

Before Mr. Epstein's book was published, virtually everyone who commented in print accepted the Commission's assurance that it was "not necessary to any essential findings" to choose between the one-bullet and two-bullet hypotheses. But the choice the commission failed to make is, in truth, essential. The assassination of President Kennedy was recorded on motion-picture film by a bystander, Mr. Abraham Zapruder. The film shows the President reacting to a first wound, it shows Governor Connally reacting to a wound, and it unmistakably records the fatal hit to the President's head. Motion-picture film comes, of course, in frames, and a camera can be timed to determine how many frames will run through it per second. The Zapruder camera operates at 18.3 frames a second. Since certain landmarks show on the Zapruder film, the Commission was able to have a car like President Kennedy's limousine

*Viking, 224 pp., \$5.00.

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placed in a series of positions on the street corresponding to various frames of the Zapruder film. The car was then photographed in these positions, as seen from the assassin's perch through a camera mounted on a rifle. This reconstruction from the assassin's point of view convinced the Commission that the first shot to hit President Kennedy was probably not fired before a frame of the Zapruder film numbered the 210th. It was at least equally improbable—indeed impossible—that Governor Connally should have been hit later than a frame numbered 240, considering the position he was in afterward. (The hit to President Kennedy's head is visible as it occurs on frame 313.)

Now if the first shot that wounded President Kennedy did not go on to penetrate Governor Connally also, and if one accepts the Commission's conclusion that President Kennedy was not shot before frame 210 of the Zapruder film, and Governor Connally was not shot after frame 240, then two shots must have been fired in the time it took the Zapruder camera to run through the 30 frames from 210 to 240. That time, at 18.3 frames per second, is something over a second and a half. But tests prove that Oswald's rifle, having once been fired, cannot be fired again in less than 2.3 seconds—this being the minimum time needed merely to operate the rifle's bolt action, without aiming or otherwise hesitating or pausing. On the Commission's assumptions as to the timing of the shots, therefore, it was physically impossible for Oswald alone to inflict President Kennedy's first wound and also shoot Governor Connally, unless he did it with a single bullet. He could not possibly have done it by shooting twice. If there were two shots within this time-span, there were two assassins. Hence it was entirely "necessary" to the "essential findings of the Commission" to determine just which shot hit Governor Connally; the Commission should have known that it was, and it is not easy to see how the three dissenters from the one-shot hypothesis could sign the Report.

The Commission brought to the support of the one-bullet hypothesis evidence and arguments that were unquestionably "very persuasive," to use the Commission's own compromise phrase, so that no reader of the Report alone can be faulted for accepting the hypothesis. The course of the bullet that went through the President's neck was determined, said the Commission, by an autopsy. The position of Governor Connally, sitting in the jump-seat in front of the President, was such that this bullet could also have inflicted all his wounds if it had maintained its downward course. Had this bullet not gone on to wound Governor Connally, it would have had to hit the inside of the Presidential limousine, or someone else in it, unless it had been deflected from its course during its passage through the President's body. But during that passage it hit no bone, and thus would not have been deflected. Quite certainly, it

hit neither the limousine nor anyone else in it. Consequently, the bullet "probably struck Governor Connally." Thus the Report.

This solid chain of evidence and deductions, however, is transformed into a slender reed as, with Mr. Epstein, one pursues the evidence and the arguments from the Report itself into the twenty-five volumes of testimony and exhibits (which were published some time after the Report), and into the investigative reports made to the Commission, which are on deposit at the United States National Archives, and are for the most part, although not entirely, declassified and available for study. Mr. Epstein's first and most dramatic discovery is that the point of entry of the bullet which supposedly traveled through both President Kennedy and Governor Connally may be in some doubt.

THE AUTOPSY was performed at Bethesda Naval Hospital the evening of the assassination. It was witnessed, among others, by three Secret Service agents, Roy H. Kellerman, Clinton J. Hill, and William R. Greer. These agents described the wound in the President's back as a shoulder wound. It was, said Kellerman, just below the upper neckline. The doctors performing the autopsy tried to probe it, but found no lane for an outlet of the bullet, and surmised that the bullet might have worked its way out of the President's back while he was on a stretcher in Dallas, perhaps as a result of the external heart massage that was administered in a last-minute effort to revive him. Agent Hill said: "I saw an opening in the [President's] back, about six inches below the neckline to the right-hand side of the spinal column." The recollection of Agent Greer was the same.

The autopsy was also witnessed by two FBI agents, since by then President Johnson had ordered the FBI to conduct an investigation. On December 9, 1963, and again on January 13, 1964, the FBI submitted to President Johnson the results of its investigation. In both of these reports (which were duly forwarded to the Warren Commission), the FBI stated flatly that the wound in the President's back was an entry wound below the shoulder, that the bullet that caused it penetrated a short distance only, and that no point of exit for it was located. These statements, which Mr. Epstein uncovered in the National Archives and published for the first time, are of course consistent with the recollection of the Secret Service agents who witnessed the autopsy, and inconsistent with the autopsy findings described by the Warren Commission. Also in the Archives appended as exhibits to the FBI reports, Mr. Epstein discovered photographs of the coat and shirt worn by the President during the assassination. These photographs seem pretty plainly to bear evidence of a shoulder rather than a neck wound. Again, Mr. Epstein emphasizes a sketch

made by Dr. Humes, a pathologist, in the course of the autopsy to aid him in preparation of his report. This sketch also appears to locate the President's back wound several inches below the lower neck.

Taken at face value, all this evidence would lead one to conclude that there never was a wound in the President's neck high enough to allow for an exit on a downward path through his throat. In that case, Governor Connally could not have been hit by a bullet that passed through the President. Mr. Epstein, responding to the apparent implications of his discoveries, is driven to the ominous surmise that the autopsy report made public by the Warren Commission may not have been the original one.

But Mr. Epstein overplays his hand. In the first place, there is a semantic problem. Descriptions of wounds sound more accurate than they can possibly be. The base of the neck, or the lower neck, may be nearer the shoulder than the nomenclature would suggest. It depends a great deal upon a man's build. For the same reason, the measurements given in the autopsy report (14 centimeters below the tip of the right mastoid process) are delusively exact. Nevertheless, the autopsy report and the testimony of the doctors who performed the autopsy constitute better evidence than that of the Secret Service agents who testified to their observations as laymen. The autopsy doctors did not see the President's clothing until they were confronted with it just before testifying to the Warren Commission. Dr. Humes, of the autopsy team, told the Commission that the holes in the clothing gave the appearance of being somewhat lower than the wound in the base of the President's neck, mentioned in the autopsy report. There was, however, he thought, an explanation. How the holes in the clothing would correspond to the hole in the President's torso, he said, "would depend on the girth of the shoulders and configuration of the base of the neck of the individual, and the relative position of the shirt and coat to the tissues of the body at the time of the impact of the missile." The President, he continued, "was extremely well-developed, an extremely well-developed, muscular young man with a very well-developed set of muscles in his thoraco and shoulder girdle." The effect would be to push his clothing up his back. Moreover, the President was waving with his right arm, and that would have a similar effect. Dr. Humes concluded that the holes in the clothing conformed "quite well" to the President's neck wound. He did not mention it at this point, but it is a fact that President Kennedy was wearing his back brace, and such a brace, as anyone who ever saw the late President would confirm, has a tendency to hunch the shoulders. This in turn would contribute to the effect described by Dr. Humes. In any case, Dr. Humes testified without qualification that, whatever the clothing

might show, the President's back wound was higher than the wound in his throat.

AS TO THE FBI, Mr. Epstein believes that it must have based its reports to the President on official autopsy results. So one would think, but it is possible that the FBI went ahead solely on the observations of its agents—laymen, like the Secret Service men. If this is so, it does not speak well for the FBI, but then there is a great deal in the hearings before the Warren Commission that does not speak well for the FBI, including testimony by the same Secret Service agents that the FBI misreported what they—the Secret Service agents—had said in interviews conducted that same evening.* Fletcher Knebel writes in *Look*, on the basis of information which seems reliable, that the autopsy report did not go directly to the FBI, but was forwarded to the White House, and then to the Warren Commission through the Secret Service. Mr. Knebel also quotes one of the autopsy doctors in an unequivocal denial that more than one autopsy report was ever prepared, and he quotes two of the principal lawyers on the staff of the Warren Commission to the same effect. That must be taken as that, notwithstanding Mr. Epstein's dire suspicions. For there is no proof that an original autopsy report was discarded and a changed one substituted.

And so, on the location of the back wound, Mr. Epstein's only hard evidence, not subject to errors of observation, recollection, or notation, is the President's clothing. According to testimony received by the Commission, there was a bullet hole in the President's coat, to the right of the center seam, $5\frac{3}{8}$ inches below the top of the collar, and a corresponding hole in his shirt, $5\frac{3}{4}$ inches below the top of the collar.† Mr. Epstein speaks of these holes as being respectively $5\frac{3}{8}$ inches "below the collar" and $5\frac{3}{4}$ inches below the collar." That makes for a difference, as Mr. Knebel points out, of an inch or so between Mr. Epstein's measurements and those given to the Commission (and the photographs did not enable Mr. Epstein to take measurements of his own). Nevertheless, Mr. Epstein argues that even if the coat could have ridden far enough up the President's back for the hole in it to conform to a wound at the base of the neck, the shirt could not have done so, since the President's collar was buttoned. That is a matter everyone can judge for himself, but as against Dr. Humes's explanation, Mr. Epstein's argument cannot be taken as conclusive.

And yet Mr. Epstein has a point, and a serious one. The Commission should have confronted the autopsy doctors with the FBI reports, and got it clear on the record that those reports were in error. And one would have expected the Commission to pursue the question of how the error

*Hearings Before the President's Commission on the Assassination of President Kennedy, Vol. II, pp. 93-95, 131.

†Hearings, Vol. V, p. 59.

came to be committed. Mr. Knebel obtained a statement from Norman Redlich, of the Commission staff, as follows: "I saw the autopsy findings on December 20 when I came to work for the Commission, and we immediately saw the conflict with the FBI's report of the autopsy. We discussed it thoroughly. Not only that, but we studied the individual reports of the FBI agents who saw the autopsy, and thus we saw how the discrepancy could have occurred." Well, how did it occur? This is not a question that the Commission should have left unanswered, and Mr. Redlich has not answered it even yet. Mr. Knebel also quotes an official FBI spokesman as saying now that "our first reports were merely to chart a course and were not designed to be conclusive," and "it is entirely possible" that "our initial reports" were not based on the written autopsy report. This is a carefully phrased, not to say fishy, statement. Our "first" our "initial" reports! Both the December and the January ones? "Entirely possible"? The fact, rather than a possibility, ought to be easily determinable.

Nor did the Commission ask Dr. Humes to explain the sketch he made in the course of the autopsy, which apparently located the wound lower than the base of the neck. Moreover, when Dr. Humes was asked whether the doctors had discounted the possibility that the back wound had received a bullet which did not exit, but rather was worked out of the President's body in the course of external heart massage, he replied only: "Yes, in essence we have." Dr. Humes admitted that the back wound had been difficult to probe, and that the doctors had at one stage entertained the possibility that there was no exit wound. Then, he said, the doctors noticed that contusions in the vicinity of the President's throat, which could have been caused by an emergency incision made at Parkland Hospital in Dallas, were similar to contusions further back, along the top of the right lung, and they concluded that these contusions taken together described the path of the bullet from the back to its exit through the lower throat. But the autopsy report refers to the throat wound only as "presumably" one of exit. So it is a matter of judgment. The doctors may have been right in their first hypothesis, and wrong in their second.

ONE ASPECT at least of the doubt in which we are left can be readily cleared up. There are, although the Commission appears never to have seen them, photographs of the President's body taken before the autopsy began. It is not clear who has these photographs; perhaps they are in the possession, or at the disposal, of the Kennedy family. In any event, an examination of them should indicate the location of the back wound. (There are also X-rays, but they would probably not be helpful in this respect.) But even if the back wound is where the autopsy re-

port places it—which is, after all, quite probable—the question remains whether the bullet that entered there came out through the President's throat and then inflicted Governor Connally's wounds. Such a bullet might have lodged in Governor Connally's final wound, in his left thigh. A bullet was found on a stretcher in Parkland Hospital which, the Commission decided, had fallen out of the Governor's thigh and was the bullet in question. It is the only bullet, aside from fragments, that was ever found, and ballistics tests have connected it with Oswald's rifle. It is a very nearly whole bullet. And there's the rub. Dr. Humes and also Dr. Finck, a well-known forensic pathologist, testified that this bullet could not have inflicted all of Governor Connally's wounds, since too many fragments were found in his wrist and thigh to make it possible for the bullet that inflicted these wounds to remain as nearly whole as this one is. Yet the bullet is somewhat flattened, and evidently it did hit something. It came off a stretcher in Parkland Hospital, and out of Oswald's rifle. If it did not come out of Governor Connally's thigh, it came out of President Kennedy's back. And if that is the case, the one-bullet theory is finished.

The Commission never refuted the firm testimony of the forensic pathologists. The only evidence it received tending to weaken this testimony was an opinion ambivalently expressed by one of Governor Connally's doctors.* The Commission simply disregarded the views of the pathologists and chose to rely instead on wound-ballistic experiments performed at its behest. And it rendered the results of these experiments, it must be said, with considerably more assurance than the testimony of the experts who conducted them warrants. The tests consisted of shooting bullets from Oswald's rifle separately through substances (both animal and mineral) simulating the President's neck and Governor Connally's chest, wrist, and thigh. No test was conducted simulating a bullet's supposed passage through the President's neck and Governor Connally's chest, wrist, and thigh. The tests were all separate. However, it was possible to measure both the entrance and exit velocities of the bullets that were fired. The Commission reports two of the three experts who conducted the tests as con-

*Dr. Charles F. Gregory, an orthopedic surgeon, thought that the bullet, having tumbled in flight, might have entered the Governor's wrist backward, and thus produced the wound that Dr. Gregory in fact treated. When asked whether there was "sufficient metallic substance missing from the back or rear end of that bullet to account for the metallic substance which you have described in the Governor's wrist," Dr. Gregory replied: "It is possible but I don't know enough about the structure of bullets or this one in particular. . . . It is irregular, but how much it may have lost, I have no idea." Dr. Gregory, interestingly enough, also thought it quite improbable that the wrist wound he treated could have been caused by a bullet that had first gone, not only through Governor Connally's chest, but also through the President's neck. Hearings, Vol. IV, pp. 117, 121, 127.

cluding that a single bullet probably inflicted the President's neck wound and all of Governor Connally's wounds, and the third as expressing no opinion. Actually, under an examination plainly aimed at eliciting this opinion, one at least of the two experts who gave it sounded none too firm.* He was quite clear only that the bullet that wounded Governor Connally in the wrist and thigh probably passed through another substance first—namely, of course, Connally's chest.

In any event, whatever these experiments may or may not prove, they do not refute, they do not even relate to, the testimony that the bullet in fact found at Parkland Hospital could not have inflicted Governor Connally's wrist and thigh wounds because it did not lose enough fragments to account for those left in the wounds. The Commission relied heavily on one other expert from whose testimony it drew substantially more assurance than was actually there. FBI agent Robert A. Frazier, a ballistics expert, testified that the President and Governor Connally were so seated in the limousine that a bullet which hit the President in the back of the neck and exited through his throat without deviation from its path could also have inflicted Governor Connally's wounds. That is the only independent opinion to which Frazier would own. Frazier, in other words, did not preclude the one-bullet theory, but said nothing to help establish it.†

THE CONSEQUENCE of all this, Mr. Epstein suggests, is that it is at least as likely as not that there was a second assassin. So must anyone believe who accepts the Commission's conclusions on the timing of the shots. But the case cannot rest there, for these conclusions in turn are neither as firm nor as necessary as Mr. Epstein, and indeed all the recent literature, would lead one to think. The basis for the belief that President Kennedy was not shot before frame 210 of the Zapruder film is that at the relevant time before that frame, a large live oak tree obscured the assassin's view of the President's back. But as the Commission indicates, for a moment before frame 210 the assassin did have an unobstructed line of fire to the President's back through a break in the tree. This was at frames 185-86. There was a split second, no more, but a shot was possible. It was, as the Commission understandably thought, an unlikely shot. Why would the assassin fire through a break in the tree, when within a second he would have an entirely unobstructed target? But the assassin, finger on the trigger, was tracking his victim through his sight. He could well have thought that the tree had been cleared. Besides, how calmly and rationally was he assessing his chances?

Now, if there was a shot at frame 186, there was time for the same assassin to get off a second shot, hitting Governor Connally before frame 240, and then a third at frame 313. President

Kennedy's reaction to his first wound must on this hypothesis have been delayed a second or so, just as on the one-bullet hypothesis, Governor Connally's reaction must be assumed to have been a delayed one; but that is not at all unusual. When exactly the President began to react cannot be determined, since Mr. Zapruder's view was blocked somewhere near this point by a street sign, and for some frames before it becomes plain that the President is reacting, the Zapruder film does not show him. It is commonly believed that the President raised his hand to his throat, but in fact both his hands seem to have gone in the direction of his upper chest,** a reaction thoroughly consistent with a back wound, and not necessarily suggesting an exit through the throat. The theory of a first shot at frame 186 also accounts for the three bullets that were probably fired from the School Depository Building, as the single-shot hypothesis does not. The first would have lodged in the President's back (later dropping out onto the stretcher), the second would have hit bone in Governor Connally, and—like the third, which went to the President's head—would have broken up, one fragment entering the Governor's thigh, and the rest bouncing up and out of the open car. This theory, then, though it also raises some questions, at least does not clash with the known facts. ††

Much greater difficulties are encountered by the hypothesis of a second assassin. We know—at least I assume it for the moment—that Oswald was shooting, we know where he shot from, and we know even, because of the three empty shells found near his perch, that he probably fired three shots. And we know, give or take an inch or two on the President's back, the wounds that were inflicted. There is not a shred of evidence pointing to a second assassin. The Commission, Mr. Epstein shows, did not look very hard for one, but he does not charge it with suppression of evidence. The Commission did discount eyewitness testimony to which Mr. Epstein alludes and of which a great deal is made in Mark Lane's *Rush to Judgment*,†† suggesting that at least some of the shots came from the area around the triple underpass, west of the School Book Depository Building. This was the direction in which the Presidential motorcade was heading, and some witnesses thought the shots came from a grassy knoll just east of the underpass, but west of the School Book Depository Building. Yet people were milling about this area, and looking down on it from the railroad bridge over the underpass, and no one saw an armed man. Moreover, and quite conclusively, whatever else the autopsy and the President's clothes may or may not show, they do demonstrate that the shots came from behind the

*Dr. Alfred G. Olivier, Hearings, Vol. V, pp. 82-85.

†Hearings, Vol. V, pp. 171-74.

**Hearings, Vol. II, p. 139; Vol. XVIII, pp. 226 et seq.

††Holt, Rinehart and Winston, 478 pp., \$5.95.

from where he was
shooting back from
the grassy knoll
12/10/63

Mr. De
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could not
leave!

Mr. De
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motorcade. Conceivably, since it could not be examined, having been opened at Parkland Hospital, the wound in the President's throat might have been a wound of entry, caused by a bullet coming from the front. But this possibility is eliminated by unshaken evidence that the wound was one of exit. For on examination, the fibers in the fabric of the President's shirt collar all pointed outward, whereas in an entry wound they would have pointed inward.

Mr. Epstein also makes something of two witnesses, one of them questioned by the Commission and the other by the FBI, who thought they saw a rifle in a window of the Texas School Book Depository Building, but thought also that they saw two men in that window. But uncorroborated eyewitness testimony is unreliable even as to general impressions received at close range, and the more so as to detail observed at a distance. This is a first wisdom in the investigation of crime. The case against Oswald does not rest on eyewitnesses alone or even chiefly; else it would be a weak case. If there was another man at the same perch as Oswald, also shooting a rifle, where are the traces of him? And if he vanished out of the building without a trace, carrying his rifle and his spent shells, why didn't Oswald? If there was no second rifle, then this second assassin doesn't solve the problem of the single-shot hypothesis, and there is no call to suppose him into existence.

OTHERS HAVE labored much harder than Mr. Epstein to erect the second-assassin hypothesis, as well as theories that the assassination was committed by persons unknown, and that Oswald was framed. One of these is Léo Sauvage, the French newspaperman, whose book, *The Oswald Affair*,† first published in France, has now been translated and made available in this country. Mr. Sauvage remarks that "it would not be an exaggeration to suppose that among the evidence gone undetected [by the Dallas police during their examination of the sixth floor of the Texas School Book Depository Building] were the footprints, the fingerprints, the gloves, the handkerchief, the calling card of another suspect—or even this other suspect himself, in person." But an exaggeration it would be, and quite an exaggeration, for the Dallas police did find the rifle and other clues left behind by Oswald. True, the Dallas police did not do too well, even considering that the assassination of a President is not an occasion calculated to bring out the best in anyone. A good part of Mr. Sauvage's book is given over to wondering at the stupidity, not to say venality, of the Dallas police, of District Attorney Wade, of other Dallas officials, of the Secret Service, and the FBI, and of the American press. Mr. Sauvage is filled with contempt, which he heaps on all concerned. Much of it is well-deserved. But it is also remarkably self-righteous, and capable of degenerating into indiscriminate abuse.

Near the end of his book Mr. Sauvage says: "I find nothing to show that Oswald was the assassin of President Kennedy." He then develops a theory of a racist conspiracy, the members of which assassinated President Kennedy and framed Oswald. This is fantasy, and the only interesting question about it is why an otherwise responsible newspaperman would wish to go to such lengths in order to avoid facing up to so much of the truth as we can be fairly confident we know. The Commission established that Oswald owned the rifle that was found near the sixth-floor window at the southeast corner of the Texas School Book Depository Building. There was ballistics evidence that the whole bullet found on the stretcher in Parkland Hospital and two fragments of bullets recovered from the limousine were fired out of this rifle. There is nothing to connect this rifle with anyone else. The night before the assassination, Oswald made an unusual trip from Dallas to the house where his wife and children lived, and where the rifle had been stored in a garage. He said he wanted to bring back some curtain rods. He was then seen carrying a long package, consistent with the curtain-rods story. The two witnesses who saw the package thought it too short to contain even the disassembled rifle. But eyewitnesses make mistakes on details of this sort. If, like these two, they are members of the same household and likely to compare impressions, they are prone to make the same mistake. There is, at any rate, no other explanation for the package. A bag otherwise meeting the witnesses' description, except for length, but in fact long enough to carry the disassembled rifle, was found near the assassin's perch in the Texas School Book Depository Building, and it bore Oswald's palm print. Oswald was in the building, and was seen on the sixth floor before noon. He was seen on the second floor by the manager and a policeman within minutes after the assassination. Mr. Sauvage tries to turn this incident into an alibi for Oswald, on the theory that Oswald could not have got from the sixth floor to the second in time for this encounter. But a reconstruction staged by the Commission demonstrated that there was time, especially since during the actual event the policeman had to jostle through a crowd, and probably took longer than he did during the reconstruction. Oswald then left the building, went to his rooming-house to pick up a revolver, and was finally arrested in a movie theater, where he had drawn attention to himself by his distraught appearance. When arrested, he had the revolver in his possession. This much about his movements after the assassination is undeniable. Oswald admitted to the Dallas police

*Hearings, Vol. V, pp. 60-61.

†World, 418 pp., \$6.85. See also, e.g., *Whitewash: The Report on the Warren Report*, by Harold Weisberg, privately published in Hyattstown, Md., 208 pp., \$4.95.

Fraser

That will not do?

that he had gone to the rooming-house to get his revolver. (It is characteristic of Mr. Sauvage's manner of argument that he wants the Commission to have proved why Oswald would have admitted owning the revolver, while steadfastly denying ownership of the rifle. Well, he was caught red-handed with the revolver.)

IT WAS ON the way from the rooming-house to the movie that Oswald—so the Commission concluded—shot and killed Officer Tippit, who was cruising in a police car. This is an incident full of unanswered questions. There is ballistics testimony that shells found in the vicinity of the Tippit shooting were fired out of Oswald's revolver. There is no ballistics proof concerning the bullets that hit Officer Tippit, although nothing about them is inconsistent with their having been fired out of Oswald's revolver. There is eyewitness testimony identifying Oswald, but it is weak. The real puzzle is what might have led to the encounter and the shooting. By this time, a vague description of Oswald as a suspect in the President's assassination had gone out over the police radio—and thereon hangs another puzzle: who was the author of this description, and how did he come by it? The Commission surmised that Officer Tippit might have recognized Oswald and stopped him. This seems exceedingly unlikely, for the description was exceedingly vague. On the other hand, if Oswald looked distraught—and why should we suppose that he did not?—the officer might have stopped him on general principles; police do that. At any rate, it is likely that Oswald shot Tippit, and that a jury would so find on the evidence available. And if Oswald did not shoot Tippit, we are in the presence of an unrelated incident, a stunning coincidence, to be sure, but it was a day for coincidences. If Oswald did not shoot Tippit, there is absolutely nothing that anyone has uncovered which can connect the incident with the assassination of the President. The incident can therefore only strengthen the case against Oswald; it can scarcely weaken it.

Nevertheless, Mr. Sauvage dwells darkly on the mysteries of the Tippit killing. Oswald, he insists, was altogether innocent, and was framed. The Dallas Police induced, or at the very least connived in, the assassination of Oswald by Ruby, not because they were part of the conspiracy to assassinate the President, but because they feared that Oswald, being innocent, would be acquitted, thus making them look very silly. Proof that Oswald was framed can be found in a series of supposed identifications of Oswald in several places during the weeks before the assassination, at times when Oswald could not have been present, in view of his known movements. The plotters were manufacturing a trail to lead to Oswald. The rest is easy. Evidence tending to prove Oswald innocent (e.g., the bag supposedly too short to carry the rifle) is evidence proving him innocent. Evi-

dence tending to prove him guilty is equally evidence proving him innocent because it is evidence that he was framed.

A variant of the frame-up theory, also positing a second Oswald who left a false trail, is developed at length and through heroic feats of the imagination by Richard H. Popkin, in the *New York Review of Books* of July 28. The trouble with Mr. Popkin's notion (as with Mr. Sauvage's) that unknown conspirators planted a second Oswald in various spots is that they did not do it in a way that would make sense from their point of view. Some of the incidents would have pointed away from Oswald, others were inconsistent with known facts about Oswald—such as that he could not drive a car. Of course, the incidents themselves remain unexplained, and the Commission could certainly have done more to explain them. But it must be realized that an event like the assassination of President Kennedy will collect around itself clusters of supposedly related incidents, which may be partly or wholly imaginary. The shock waves of such an event reach many people in many curious ways. An event so universally known will also bring to light genuine coincidences, which abound in life, but are normally not remarked. The election of a new President, for instance, invariably turns up someone, in some corner of the country, who looks exactly like him.

Mark Lane, the veteran demonologist, from whom Mr. Sauvage is, for some reason, careful to dissociate himself, also devotes attention to the second Oswald theory. But then his book is a grab-bag of virtually all the conceivable theories that offer an alternative to the findings of the Commission. He makes some of the same points made by Mr. Epstein, and suggests that even if someone shot at the President from the Texas School Book Depository Building, someone else also shot at him from the front—despite the fact that the fibers of the President's shirt collar show the throat wound to have been one of exit and not of entry. He wonders—utterly without foundation—whether Oswald's rifle, which the Dallas police said they found on the sixth floor of the Depository Building, was in fact found there, or was otherwise produced by the Dallas police. He picks, quite unsuccessfully, at the evidence that Oswald bought and owned the rifle. He is absolutely certain that Ruby "murdered Oswald through the complicity or complacency of members of the police." He divines in the pathetically deranged testimony of Ruby before Chief Justice Warren in Dallas a series of shrewd if muted hints by Ruby that he had a tale to tell, would the Chief Justice but allow him to tell it in Washington rather than Dallas. He has Ruby and Officer Tippit meeting at Ruby's nightclub on November 14 with one Bernard Weissman, a hanger-on of right-wing groups in Dallas. He has Ruby involved in some abortive plot to run guns

into Cuba for use by anti-Castro guerrillas. And so on and so on. Mr. Lane's book is introduced, approvingly, yet not without a note of caution, by H. R. Trevor-Roper, for whose most brilliant scholarly achievements the Warren Commission has not provided the occasion. The book is wildly speculative, and it is—rather like Mr. Sauvage's work—peripheral and indiscriminate. It treats all facts, all questions, all doubts, not merely as equally relevant, but as equally decisive. Great trial lawyers, like great detectives, have an instinct for the jugular. Mr. Lane has an instinct for the capillaries.

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IT IS NO longer possible, however, simply to love the Warren Commission for the enemies it has made. We know now that the Commission did not satisfactorily investigate the assassination. It did not fit the established facts into a narrative consistent with all of them. This is no Sacco-Vanzetti, and no Dreyfus case. No innocent man stands convicted. But a President of the United States was wantonly shot down, and if there is such a thing as national honor, we must know all that can be known of the truth of this terrible affair. Somehow, through some disinterested investigative agency, our government must either rehabilitate the one-bullet theory, or establish some other probability. If a first pristine bullet lodged in President Kennedy's back, why did such a bullet not penetrate further? Is it possible that it might have brushed a branch of the live oak tree, and lost some speed in this fashion? How on this hypothesis was the President's throat wound inflicted? It appears certain from the fibers of his shirt-collar that it was an exit wound. Could a fragment of bullet or bone from the President's head wound have caused the wound in his throat? What happened to the bullet that hit Governor Connally?

The Warren Commission did not explore these questions, nor many others. As Mr. Epstein is able conclusively to show, the supposed massive and definitive investigation conducted by the Commission was in fact hurried and superficial. The Commission had little full-time staff, and under pressure mainly from the Chief Justice, who wanted the Report finished and out as soon as possible, it gave what staff it did have little opportunity to conduct thorough, independent investigations. The staff operated through a bureaucratic maze, exchanging memoranda with the FBI, venturing only occasionally into the field itself, having no corps of investigators assigned to it and acting under its control, and having also little contact with the Commission. The Commission consisted of men busily engaged in other affairs, whose attendance was spotty and in some instances highly infrequent, and who simply could not have had adequate opportunity to give direction to the inquiry, or even to arrive at fully informed judgments on the facts. It is a marvel that

parts of the Report are as sound as they are. But that, of course, is not nearly good enough.

There is a tendency, exhibited by Mr. Lane and Mr. Sauvage, and by others, not excluding even Mr. Epstein, to demand of the Commission a certain unattainable perfection: no unanswered questions, no loose strings, a Report all-knowing and infallible. There goes along with this tendency something of an idealization-by-contrast of the criminal trial, in which the defendant is represented by counsel with a right to cross-examine. Such trials supposedly answer all relevant questions. But they do not. Nothing is more characteristic of the criminal process than that it narrows the line of vision severely, asks one or two essential questions, answers them in terms of probabilities, and goes on to the next case. A trial of Oswald, assuming for the moment it could have been a fair one, would undoubtedly have resulted in conviction, and would have given us much less information than even the Warren Commission has produced. To say this, however, is by no means to excuse all the loose strings the Commission left lying about, or the instances when it professed to know what it could not prove. The Commission was subject to its own kind of illusion of infallibility. On little evidence, if any at all, it concluded not only that the bullet found in Parkland Hospital came from Governor Connally's stretcher, but that Oswald was the author of the notorious attempt to assassinate former Major General Edwin Walker. All too often, the phrase, "the Commission has concluded," was made to substitute for evidence. It is almost as if, through the agency of the Chief Justice, the Commission had borrowed a habit that the Supreme Court sometimes indulges of settling a point of law on which the arguments run with equal force in two directions by simply saying, "We hold that. . . ." It is an arbitrary habit, and not a good one for a court of law. It is an inexcusable habit in a fact-finding body, whose conclusions must be true rather than good.

Why, one is entitled to ask, did it turn out this way? Mr. Epstein, who addresses himself to this question, says that the Commission—four senior Senators and Congressmen; Allen W. Dulles, the former head of the CIA; John J. McCloy, a highly and justly respected elder statesman; and, above all, the Chief Justice of the United States—was at least as eager to protect the national interest "by dispelling rumors" as it was to establish the truth. It established, therefore, something that Mr. Epstein calls "political truth," which may not be a lie, but is certainly and willfully not the whole truth. No doubt a national interest was perceived in dispelling the sort of rumors that Messrs. Lane and Sauvage are still peddling, and undoubtedly the Commissioners shared with the President who appointed them a presumptive faith in the essential findings of the Dallas police and of the FBI, which pointed, of

course, to Oswald as the lone assassin. But fidelity to this conception of the national interest, and the presumption in favor of the prior investigations, need not have involved the Commission in trifling with the truth. A conflict between the truth and a national interest of sorts might have arisen only if the facts had necessarily pointed to a second assassin. But they did not. Mr. Epstein does not demonstrate that the Commissioners put the national interest, as they saw it, above the requirements of truth, and published "political truth." That he simply asserts. What he succeeds in showing is only that the Commissioners did an inadequate job—something that men are all too capable of doing with the utmost honesty, and whether or not they see themselves as constrained by reasons of state.

The Commission's besetting sin was in being the kind of institution it was, in which men of prestige and authority assume responsibility for work they do not direct and barely supervise, while other men, who have neither authority nor responsibility, do the work. The result is nobody's product, which is likely to be worse than nearly anybody's. There are no good commissions of this sort, but this was a particularly bad one, because staff and time were in particularly short supply, because those who did the work were particularly lacking in authority and limited in initiative, and those who were responsible had particularly little connection with the work. It is one thing to use staff as an extension of oneself; it is quite another to receive staff work through channels, especially when it is mostly second-hand staff work at that, forwarded from the FBI through yet another channel. We are unfortunately seeing more and more such Presidential Commissions—there is one on crime, and a newer one on the selective service—which employ prestigious names to persuade the public that the findings and conclusions of an obscure staff merit its confidence. The trick works, but it is a trick.

That the trick works, and works on nearly everyone, is proved by the reception generally accorded the Warren Report when it was issued. Yet the trick worked in this case also because the Report bespoke the continuity of American history, and confirmed the cherished sense of the separateness of that history from the common experience of mankind. The assassination of President Lincoln and the attempt by Puerto Rican nationalists on the life of President Truman may have been political conspiracies of a sort. They were acts of revenge, however, by isolated and politically incoherent conspirators. Even these incidents have little in common, therefore, with the kind of political assassination that other societies have known. The assassinations of our Presidents, and the attempts on their lives and on the lives of Presidential candidates and Presidents-elect, have invariably been committed by a type of deranged loner, a type that even John Wilkes

Booth fits, and that Oswald fits very well indeed. Consciously or otherwise, most of us did not wish this tragic but reassuring continuity to be broken by an event that would assimilate the American experience, as Mr. McCloy expressed it, to that of "a banana republic, where a government can be changed by conspiracy." Hence the findings of the Warren Commission, and the fatuous praise with which all the voices of the great majority greeted them two years ago, were in some measure a matter of wish-fulfillment. Of course, there is also in play a minority wish—and it continues to be in play, even though its pursuit demands an increasingly fierce resistance to reality. This is the wish of a portion of the Left, clinging stubbornly to a kind of abstract logic, to believe that the shots that killed John F. Kennedy came from the organized Right. In all probability, it is the majority wish that did actually correspond to the reality in this case. But the Warren Commission did not establish the correspondence beyond a reasonable doubt. That can only be done by a renewed and more effective effort to uncover the truth "as far as it can be discovered."

THE LIKELIHOOD that Congress or President Johnson will organize a fresh investigation is easily overestimated. To do so would be to say officially something quite unusually harsh about the performance of such personages as the Chief Justice of the United States, the most influential Southerner in Congress (Senator Russell of Georgia), and the Majority Whip and the Minority Leader of the House of Representatives (respectively, Messrs. Boggs of Louisiana, and Ford of Michigan), let alone the other members of the Commission. But the excuse that no institution is available or is readily created which could be expected to be free of the Warren Commission's built-in drawback—this excuse no one need credit. The *ab initio* prestige of the Warren Commission cannot be duplicated without risking that Commission's infirmities, but candor and a self-evidently painstaking effort to uncover truth can generate prestige and acceptability of their own. All that is called for is a compact body of three to five men, drawn from private life or perhaps on leave from judicial office, whose independence is assured, whose full energies are devoted exclusively to the task at hand, and to whom are confided the necessary power (which the Warren Commission possessed), and the resources to use that power (of which the Warren Commission hardly availed itself). As Professor Herbert L. Packer of the Stanford Law School has shown, looking at the problem in a different context in his book, *Ex-Communist Witnesses*, there are models on which to pattern such an investigative institution and its modes of operation, and there are ways of constituting one. It should be done, and quickly, before total staleness of the evidence sets in.

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